

MBTA EEO Compliance Program

This MBTA EEO Compliance Program ("Program") is adopted this 6th day of February, 1997 pursuant to agreement by and among the Massachusetts Bay Transportation Authority ("Authority"), the Attorney General of the Commonwealth of Massachusetts ("Attorney General"), and the undersigned Labor Organizations as representatives of their respective Collective Bargaining Units at the Authority ("undersigned Labor Organizations").

A. INTRODUCTION

The Authority is committed to equal opportunity in employment for all employees and applicants and will not tolerate discrimination or harassment in any form. Nor will it tolerate retaliatory conduct toward persons who have filed complaints or assisted in an investigation of alleged discrimination or harassment. The Authority will continue to implement its policies of non-discrimination and Zero-Tolerance to foster a fair and respectful environment where equal and fair treatment is an integral part of daily operations. The Authority will take effective action to prevent and eliminate discrimination and harassment on the basis of race, color, national origin, ancestry, sex, sexual orientation, religious creed, age and disability with regard to employment or the terms and conditions of employment including, but not limited to, promotions, terminations, transfers, job assignments and discipline. It will also take effective action to ensure that employees will not be retaliated against for filing complaints for harassment or discrimination or participating in such investigations. As used in this Program, "disability" refers to discrimination, harassment and retaliation and not to the Authority's

separate obligation to accommodate people with disabilities within the meaning of federal and state anti-discrimination laws.

B. NOTIFICATION TO EMPLOYEES OF THEIR RIGHTS

General Principle: The Authority shall inform employees of their rights to be protected from discrimination, harassment and retaliation as guaranteed by the laws of the Commonwealth and by federal law. Employees shall be informed that the Authority will take appropriate and necessary steps to protect them from discrimination or harassment or from any form of retaliation for filing a complaint or assisting in an investigation into alleged violation of any of these rights.

- (1) The Authority shall communicate to all employees that they have the right to file a complaint with the Massachusetts Commission Against Discrimination within one hundred eighty (180) days or the Equal Employment Opportunity Commission within three hundred (300) days from the time of the alleged violation, notwithstanding an employee's invocation of a union grievance or the Authority's internal complaint procedures, outlined below.
- (2) The Authority shall provide copies of its non-discrimination and Zero-Tolerance policies and its complaint procedure(s) to all employees by personal in-hand service, or by first class mail, at the same time it delivers the employees' pay checks. The Authority shall also post such policies and procedures in a place conspicuous to employees at every location where job postings and 'job pick' assignments are posted. An employee's refusal to accept such copies shall be considered delivery under this section.
- (3) The Authority shall post a notice of employee rights under federal and state fair

employment laws in all locations where job postings and 'job pick' assignments are posted.

C. EMPLOYEE EDUCATION AND TRAINING

General Principle: The Authority shall provide education and training to all Authority employees concerning their rights, responsibilities and obligations under state and federal fair employment practices laws and the Authority's EEO Compliance Program.

- (1) The Authority shall provide an orientation for new employees within a reasonable period of time from their hiring which addresses its harassment and discrimination policies and complaint procedures.
- (2) The Authority shall hold comprehensive training sessions concerning harassment, discrimination and anti-retaliation laws and its internal policies prohibiting harassment, discrimination and retaliation. Each employee and supervisor is to attend such a comprehensive training session within two (2) years of the effective date of the Program, and follow up refresher training sessions at a minimum of once every two (2) years following the initial training. All supervisors shall be trained initially within nine (9) months of execution of the Final Agreement, with the cooperation of the Office of the Attorney General.
- (3) If the Office of Diversity identifies either a pattern of discrimination, harassment or retaliation or need for more intensive training in a particular job site or area, the Authority shall hold a special training session for the supervisors and employees in that job site or area within three (3) months of the pattern or need being identified and annually thereafter, until the Office of Diversity determines

that the need has been met.

- (4) Training shall include, but not be limited to, a detailed description of the internal complaint procedure established for the investigation and resolution of alleged violations of its policies and available recourse with the Massachusetts Commission Against Discrimination and the Equal Employment Opportunity Commission. The training shall include, but not be limited to, information concerning the channels of communication and assistance available to Authority employees who observe or believe they have been subject to harassment, discrimination and retaliation as well as the right of employees, after informing and obtaining permission from their supervisors, which will not be unreasonably denied, to leave the job site during work hours to file a complaint with the Office of Diversity. Supervisors shall be trained in the requirements of applicable federal regulations regarding reasonable suspicion standards and record-keeping obligations for drug and alcohol testing. At such trainings, employees shall be strongly encouraged to report claims of harassment, discrimination and retaliation to their supervisor, if appropriate, and to the Office of Diversity.
- (5) The Authority shall utilize qualified trainer(s) to conduct said supervisory trainings.
- (6) The Authority shall submit to the Attorney General a summary of the intended topics to be covered during the training(s) and copies of materials to be distributed. Additionally, the Attorney General shall be given at least two (2) weeks advance notice of the time and place of each such training and shall be

permitted to monitor said training upon request.

- (7) The group of employees being trained will include representatives of protected classes in sufficient numbers.
- (8) The Authority shall solicit feedback from employees to ensure that the information is being effectively communicated.
- (9) The Authority shall maintain lists and dates of attendance at trainings/orientations for all employees.

D. REPORTING PROCEDURES

General Principle: The Authority shall adopt policies and procedures to reasonably ensure that allegations and claims of harassment, discrimination and retaliation are reported to the Office of Diversity.

- (1) Any employee who believes [s]he has been a victim of harassment, discrimination or retaliation will be strongly encouraged to report this fact as soon as possible to his or her supervisor, if appropriate, and to the Office of Diversity.
- (2) Any supervisor to whom a report is made or who witnesses or otherwise becomes aware of harassment, discrimination or retaliation is required to immediately report such conduct to the Office of Diversity.
- (3) Any supervisor who observes or is informed about any racial, religious, national origin, or sexually charged or hostile graffiti or caricature displayed in any location or facility owned or operated by the Authority (excluding buses, trains and publicly-accessible station areas) shall immediately notify the MBTA police and the Office of Diversity. The Authority shall immediately remove and collect



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such displays for investigatory purposes. If such graffiti or caricature is drawn on walls or on other sites, it shall be photographed by the Authority for investigatory purposes before it is erased or covered.

E. COMPLAINT PROCEDURES

General Principle: The Authority shall establish, implement and maintain effective complaint investigatory procedures, covering the reporting and investigation of complaints and record keeping. The procedures will require and strongly encourage reporting of unlawful treatment and provide for the conduct of investigations in a prompt, fair and impartial manner.

- (1) The Authority shall establish, implement and maintain an effective procedure for identifying and rectifying, in the first instance, harassment, discrimination or retaliatory conduct occurring within its workplace.
- (2) For harassment and retaliation claims, the Authority shall investigate and make a determination on the merits of formal complaints promptly, within fourteen (14) days following the filing of a complaint, unless there is good cause to require more time. For discrimination claims, the Authority shall investigate and make a determination on the merits of formal complaints promptly, within sixty (60) days, unless there is good cause to require more time. In all cases, the reasons for delay shall be documented, with notice to the parties. As used above, good cause includes for example, the unavailability of a material witness, more time needed to obtain a handwriting exemplar analysis or to interview witnesses, where they are too numerous to complete within the agreed-to time frame. However, investigations of and determinations in harassment and retaliation claims shall be

concluded within forty-five (45) days and discrimination claims within one hundred twenty (120) days. In addition, the Authority agrees to inform all complainants of his or her right to file a complaint with the Massachusetts Commission Against Discrimination within one hundred eighty (180) days and the Equal Employment Opportunity Commission within three hundred (300) days from the time of the alleged violation, and that the invocation of the internal complaint procedure or a union grievance process does not toll the statute of limitations.

- (3) All formal complaints shall be thoroughly investigated. This shall include interviewing the complainant, the alleged wrongdoer and all available witnesses separately, including those witnesses whom the complainant and alleged violator offer in support or in defense of the allegations. The Authority shall request written and signed statements from the complainant, alleged wrongdoer and all material witnesses. When an employee of the Office of Diversity has taken a signed statement from a complainant, respondent or witness, a copy shall upon request (which may be made at any time) be provided to that person within three (3) working days. The Office of Diversity (not the complainant or alleged wrongdoer) has the affirmative duty to seek to obtain the cooperation of identified witnesses and to schedule meetings of witnesses during their work hours. The refusal of an alleged wrongdoer or material witness to cooperate in the investigation or to provide and sign a statement based on personal knowledge may be deemed a disciplinary offense, unless good cause excuses such failure.

Relevant documents which may establish facts shall be collected and reviewed. A written record of the investigative interviews and all investigatory steps shall be made and maintained.

- (4) A form will be devised by the Authority to inform employees that they will not be subjected to retaliation for cooperating with the investigation, provided, however, that the Authority may discipline any employee whom it determines has knowingly provided false information in the course of an investigation or who has filed a complaint in bad faith.
- (5) The Authority shall require that all its internal investigators and decision makers act fairly, objectively and in a professional manner. The Authority shall provide appropriate training to individuals engaged in conducting its investigations, weighing the evidence, and resolving complaints. This shall include training of its internal investigators and decision-makers in federal and state anti-discrimination law. The Authority shall submit to the Attorney General a syllabus of the training and copies of materials to be distributed.
- (6) The Authority shall ensure that all employees responsible for investigating or making determinations for complaints of discrimination, harassment and retaliation have sufficient qualifications and skills to investigate such complaints.
- (7) The Authority shall prepare and maintain a written internal Office of Diversity report once an investigation has been completed and a decision made concerning a complaint. Such report shall include factual findings, including the documentary or witness source for such findings (except that a witness requesting

confidentiality shall not be identified and information that could lead to the identification of such witness shall not be contained in this report) and the final determination of the complaint, including all corrective action ordered.

- (8) The Authority shall maintain a written record of each internal complaint filed with it which shall include the nature of the complaint, the date filed, the name of the alleged wrongdoer, the name of the complainant, the work area of the alleged wrongdoing, and the date and nature of final resolution. Such information shall be compiled and centrally maintained in a form in which this information can be analyzed and tracked by designated Authority personnel.
- (9) The Authority shall not suspend or terminate an Office of Diversity investigation, fail to make a determination or to take appropriate disciplinary or corrective action even though a complaint has been filed or is pending in the MCAD, EEOC or in court.
- (10) The Authority shall designate an employee or employees in the Office of Diversity with the responsibility of assisting complainants through the complaint process. The responsibilities of such employee shall include explaining in detail the complaint process and options of pursuing claims through the MCAD or EEOC, helping the complainant prepare a statement and/or complaint, and answering complainant's questions or concerns, including questions about the status of the process.
- (11) The Authority shall engage in an internal investigation of all complaints which are filed with the MCAD, EEOC or in court, where the internal investigation has not

been concluded and a determination made. The Authority shall be obligated to complete such investigations within the time frames detailed in paragraph E-2 above. Within one hundred twenty (120) days of the effective date of this Program, the legal office of the Authority shall, in cooperation with the Office of Diversity, review and if appropriate further investigate all pending MCAD, EEOC and related court cases to determine whether further corrective action or discipline is required in those matters, and, if so, cause such action to be taken.

- (12) The Authority shall designate no fewer than fifty-four (54) supervisors located at the Authority's sixteen (16) principal job sites, which are listed below, on each shift to receive formal or informal complaints of discrimination, harassment and retaliation and to assist complainants with the filing of complaints. Such complaints shall be immediately forwarded by the supervisor to the Office of Diversity. All supervisors serving in this capacity shall be specially trained by the Authority for this role. The principal job sites are: Cabot, Charlestown, Everett, Arborway (Transportation), 10 Park Plaza, 45 High Street, Orient Heights, Wellington, JFK/UMass, Riverside, Reservoir, Lynn, Quincy, Bartlett, Albany, and 500 Arborway (TSS).

F. CORRECTIVE ACTION AND DISCIPLINE

General Principle: The Authority shall take immediate and appropriate action following receipt of an harassment complaint based on any protected class status set forth in G.L. c. 151B, to protect the complainant or to ensure maintenance of a non-intimidating, non-hostile work environment during the period of the investigation. If at the conclusion of an investigation the

Authority finds that discrimination, harassment or retaliation has occurred it shall take appropriate corrective action in a timely manner and communicate this to the complainant and alleged wrongdoer.

- (1) Protection of the complainant may require the temporary suspension, transfer or removal of the alleged wrongdoer from the work environment during the period of the investigation. If removal of the alleged wrongdoer is not necessary, the Office of Diversity will define the terms of the continued professional relationship between the complainant and the alleged wrongdoer during the period of the investigation. A complainant will be temporarily transferred, only where he or she initiated the request, and only after being informed by the Authority that other options are available. Before any transfer of a complainant, the Authority shall take reasonable steps to ensure that the complainant did not choose to transfer involuntarily or for inappropriate reasons.
- (2) One important goal of disciplinary and corrective action for harassment occurring because of or based on the protected class status of the victim is that it is reasonably calculated to stop any further harassment by the harasser.
- (3) Physical, verbal and/or written forms of harassment based on race, color, national origin, ancestry, religious creed, sex, age, disability, and perceived or actual sexual orientation of the victim, or retaliation shall be deemed a serious offense that subjects the violator to severe forms of discipline for a first offense, up to and including suspension and/or termination. Harassment on account of an employee's protected class status which includes unwelcome or unconsented

touching of a sexual nature, a physical assault, or threats, intimidation or coercion as set out in G.L. c. 151B §§ 4A and 5, shall be deemed a serious offense which subjects the employee to discharge for a first offense, although the Authority may, if appropriate, impose a lesser sanction. Other forms of discrimination and retaliation shall result in discipline commensurate with the severity of the offense, which may include suspension and/or termination for a first offense of a serious nature. In addition to any disciplinary action ordered, corrective action may include counseling, training, participation in the Employee Assistance Program (EAP) program and periodic monitoring and review of the supervisor or employee.

- (4) A collective bargaining unit, on behalf of a person disciplined for conduct within the scope of this Agreement, retains existing rights to file a grievance, raise existing procedural and other arbitrable due process defenses and submit the grievance to the union arbitration process provided under the applicable collective bargaining agreement. The arbitrator shall retain whatever discretion he or she otherwise has to reduce or modify the discipline imposed by the Authority (e.g., warning, suspension or termination), so long as such award is not inconsistent with the requirements of federal and state anti-discrimination laws and this Program, including F(3) above. However, unless the arbitrator makes an express finding that the objectionable conduct did not occur, [s]he shall not retain the discretion to modify any non-disciplinary corrective action imposed by the Authority, including action designed to protect the complainant, such as

separation of workers, or changing of shifts. In all cases the arbitrator shall have the discretion to find as a matter of fact that the grievant did not commit the objectionable behavior.

- (5) Under no circumstances shall the terms and conditions of the complainant's employment be modified by the corrective action undertaken by the Authority, whether by transfer, change of shift or otherwise, without the express agreement and voluntary consent of the complainant, unless there is a finding that the complainant engaged in a separate and distinct employment violation.
- (6) The Authority shall notify all employees that complainants, alleged wrongdoers charged with discrimination, harassment or retaliation and witnesses to such conduct may request union representation at any stage of the investigation by the Office of Diversity, including during the investigatory interview as well as when preparing a written statement for purposes of such investigation. Notice shall also be provided in writing to Office of Diversity interviewees (whether complainants, alleged wrongdoers or witnesses) by the Office of Diversity, prior to the commencement of the interview.
- (7) The Authority shall follow-up with the complainant two (2) weeks after communication of the corrective action to the parties for purposes of monitoring the effectiveness of the action and to determine whether the complainant has been subject to any retaliatory conduct. Such follow-up shall occur every three (3) months for one (1) year and thereafter if the situation warrants it. A written record of such follow-up shall be made and maintained and

include details of any complaints of retaliation or harassment.

- (8) A complainant may request and obtain a review by the General Manager or his designee (who shall be an executive level employee of the Authority) of non-discipline related determinations regarding complaints of harassment, discrimination and retaliation by the Office of Diversity (e.g., promotions, job assignments, or transfers). This shall not preclude a complainant from filing a complaint in the MCAD or EEOC at the same time.
- (9) Even without a formal or informal complaint, the Authority shall investigate anonymous or third-party allegations or reports of discrimination, harassment or retaliation, if it has reason to believe such conduct has occurred.

G. DEFENDING AUTHORITY DECISIONS

General Principle: The Authority shall vigorously defend its disciplinary decisions and any resulting corrective action based on its findings of discrimination, harassment or retaliation.

- (1) Where such decision or action is grieved by the disciplined party through the Union arbitration process or where applicable, the Civil Service process, the Authority will vigorously defend its position.
- (2) The Authority shall be required to seek judicial review only if reasonable grounds are available to challenge an arbitration award under G.L. c. 150C, § 11, state and federal anti-discrimination law, or any judicially-created grounds for challenge, including that the arbitration award offends public policy established by federal and state anti-discrimination laws.
- (3) Nothing herein precludes the Authority from changing its legal position if new,

relevant information is received or an additional witness(es) comes forward after a disciplinary decision had been made.

H. INFORMAL PROCEEDINGS

General Principle: After receipt of an initial complaint, the Office of Diversity may propose informal remedies, in appropriate circumstances.

- (1) Informal proceedings may be instituted by the Authority only in cases where low level, non-pervasive and non-severe forms of discrimination, retaliation or verbal or written forms of harassment are alleged; where a formal or informal complaint is not pending against the alleged wrongdoer; and where the alleged wrongdoer has never been found to have engaged in discrimination, harassment or retaliation in the past.
- (2) If the complainant agrees to pursue an informal resolution, the supervisor, if appropriate, and personnel from the Office of Diversity shall meet with the alleged wrongdoer, and propose a remedy. Alternatively, if the complainant, alleged wrongdoer and personnel from the Office of Diversity agree, the parties may engage in mediation or facilitation which results in a proposed remedy. If the informal remedy is accepted by the complainant and alleged wrongdoer, the situation will be monitored closely by the supervisor, if appropriate, and the Office of Diversity, to determine whether the work climate has changed or whether there are further incidents.
- (3) If the situation is not rectified, or the alleged wrongdoer declines to agree to the informal solutions, the complainant shall be encouraged to file a formal

complaint.

- (4) Even if the complainant does not file a formal complaint, the Office of Diversity may nevertheless determine that an investigation should ensue.
- (5) Under all circumstances, even if neither an informal nor formal proceeding ensues, and the matter is neither informally nor formally resolved, the Office of Diversity shall maintain the information set forth in Section E(8).
- (6) If the matter is informally resolved, it is subject to the documentation and centralized record-keeping provisions set forth in Sections E(8) and I.

I. ESTABLISHMENT OF MONITORING SYSTEMS

General Principle: The Authority shall develop, implement and maintain a system of monitoring and reviewing personnel actions to determine whether employees are being afforded equal opportunity in the terms and conditions of employment within the Authority; whether employees are subject to disparate treatment based on race, color, national origin, ancestry, sex, sexual orientation, religious creed, age and/or disability; whether employees are subject to adverse impact based on race, color, national origin, sex and/or age; whether the nature and severity of disciplinary action is applied consistently to all similarly-situated employees, regardless of their race, color, national origin, ancestry, sex, sexual orientation, religious creed, age and/or disability and whether employees who have complained of or observed harassment and discrimination are the victim of any form of retaliation by supervisors or co-employees.

- (1) If there is a violation in any of these areas, the Authority shall take appropriate corrective action.
- (2) Information maintained within the Authority's centralized record-keeping system

shall be reviewed on an on-going basis to identify patterns of violations by particular employee(s) or supervisor(s) or to identify locations where such conduct has or is occurring on more than one occasion.

- (3) If and when a pattern of violation is identified as to a particular employee, supervisor or location, immediate and appropriate corrective action shall be taken. A pattern shall mean where the same employee or supervisor is alleged to have been the violator in more than one incident, where more than one related or similar incident occurs in the same area or job site. Where allegations cannot be substantiated, and prior to a determination as to the merits of such complaints, appropriate corrective action shall include special monitoring and supervision of the employee, supervisor and/or location.
- (4) The Authority shall establish, implement and maintain a system to specially monitor and supervise any supervisor who has been determined to have engaged in harassment, discrimination or retaliation to ensure that his or supervisory decisions or actions do not discriminate or retaliate against employees, including persons who have violated anti-discrimination laws prior to the effective date of this Program. For such supervisors, monitoring shall include heightened scrutiny of promotional, assignment and disciplinary decisions and monitoring to ensure that harassment, discrimination or retaliation is not taking place. A written record shall be maintained for each person subject to this provision which documents the monitoring and any problems revealed.
- (5) The Authority shall revise its performance evaluation form(s) to evaluate

personnel to include an equal employment opportunity (“EEO”) factor which establishes, for each manager, supervisor or employee, a rating on whether the employee has engaged in conduct that violated state or federal anti-discrimination law, or any of the policies of the MBTA with regard to Dignity in the Workplace. The Authority shall provide written notice to all employees of this change. Prior to giving any employee in the MBTA any promotion, temporary change position, award, commendation or other benefit based on the manager, supervisor or employee’s overall performance, the Authority shall consider whether the employee engaged in conduct that violated federal or state anti-discrimination law or any of the policies of the Authority with regard to Dignity in the Workplace.

- (6) The Authority shall ensure that there are adequate bathroom facilities available for its employees.
- (7) Effective sixty (60) days following the Effective Date of this Program, the Authority will post all permanent job vacancies, below the level of executive management personnel, for a minimum of fourteen (14) calendar days before determining who shall fill the vacancy. The posting shall include a job description and job experience requirements. The postings shall be secured against theft or destruction. The Authority shall maintain records of the job postings applications and copies of resumes received and of the decision made to fill the position.
- (8) The Authority shall maintain records pertaining to its decisions to fill positions temporarily through temporary change lists and of its records pertaining to

reasonable suspicion drug and alcohol testing, and discipline resulting therefrom.

The Authority shall maintain other specific records of discretionary personnel actions upon reasonable request of the Attorney General.

J. SUPERVISORS' RESPONSIBILITY FOR DETECTION AND REPORTING OF VIOLATIONS

General Principle: MBTA supervisors and managers shall be held accountable for recognizing, identifying and remedying violations of employee rights and for reporting complaints and any information received suggesting harassment, discrimination or retaliation to the Office of Diversity, in accordance with this Compliance Program. Supervisors and managers whom the Authority determines have neglected, ignored, failed or refused to carry out their responsibilities in this regard shall be subject to serious disciplinary action, up to and including termination.

- (1) Supervisors and managers shall be required to take appropriate steps to establish and maintain a workplace free of harassment, discrimination or retaliation and shall be held responsible for the failure to take appropriate action to prevent or to eliminate the unlawful conduct.
- (2) Any supervisor who ignores or fails to take appropriate action after observation or receipt of complaints of alleged violation of the Authority's policies, delays the initiation of an inquiry, fails to document the scope and nature of any complaint, or who fails otherwise to ensure (i) the prompt and appropriate identification of all information reasonably related to the allegation, and (ii) the resolution of each matter within Authority guidelines, shall be subject to serious disciplinary action,

up to and including termination of employment.

- (3) All employees who are to be held responsible for reporting or taking appropriate steps for the conduct of others under this Program, as described in this section, and Section D(2) and (3) shall be designated by the Authority, with notice to such employee within ninety (90) days of the Effective Date of this Program. Such designation is made solely for the effective implementation of this Program and nothing herein shall be deemed to limit or expand the liability of the Authority or such person in any collateral proceeding, including actions pursuant to Title VII or G.L. c. 151B.

K. RESPONSIBILITIES OF EMPLOYEES

General Principle: Each employee and supervisor of the Authority shall be held responsible for compliance with this Program: no employee shall harass or discriminate against another employee or other individual in the workplace; retaliate against another employee or other individual in the workplace who files a complaint alleging harassment or discrimination or assists in an investigation thereof; fail or refuse to cooperate upon request in the investigation of complaints of alleged harassment, discrimination or retaliation; or otherwise fail to cooperate with the Authority's efforts to prevent and eliminate harassment, discrimination and retaliation and to maintain a working environment free from such unlawful discrimination, harassment and retaliation.

L. CONFIDENTIALITY OF ALLEGATIONS OF COMPLAINTS

The Authority shall make reasonable efforts to maintain the confidentiality of the allegations of the complaint, the complainant and the alleged wrongdoer to the extent reasonable

without adversely affecting the ability of the Authority to perform an investigation or take corrective action, or to comply with the provisions of this Program.

M. ACCESS TO PERSONNEL FILE

An employee, upon reasonable notice, shall be given the opportunity to review his or her personnel file during normal working hours. Upon request, the Authority shall copy an employee's personnel file at a cost of no more than twenty cents (\$0.20) per page.

N. BACK TO WORK AGREEMENTS

Any "back to work" or "work resumption" agreement presented by the Authority to an employee shall: (1) not include a waiver of rights to file a claim in the MCAD, EEOC or in any state or federal court for harassment, discrimination or retaliation based on any future event, which occurs after the execution of such agreement; and (2) not require that the employee withdraw any complaint of discrimination, harassment or retaliation filed with the Office of Diversity, provided, however, that the resolution of such internal complaint shall not affect the terms and conditions of the "back to work" or "work resumption" employment agreement.

O. INTERPRETATION OF COMPLIANCE PROGRAM IN RELATIONSHIP TO COLLECTIVE BARGAINING AGREEMENTS

To the extent possible, this Compliance Program shall be interpreted in a manner consistent with each collective bargaining unit's collective bargaining agreement, so long as the collective bargaining agreement does not conflict with any of the provisions of this Program or the intent, purposes, objectives and requirements of federal and state anti-discrimination and anti-harassment laws. Except as modified or limited by paragraph F(3) and F(4), nothing herein diminishes or terminates the right of an employee, through their labor organizations, to invoke

any grievance or arbitration procedure in effect and available under the applicable collective bargaining agreement at the Effective Date of this Program. The time periods for completion of investigations and the imposition of discipline set forth in paragraph E(2) shall supersede any shorter time periods specified in any collective bargaining agreement.

P. AMENDMENT AND MODIFICATION

The Program shall not be amended or modified except with the express agreement of the General Manager and the Office of the Attorney General. The Authority shall modify its existing procedures and policies to conform to the provisions of this Program.

Q. NON-LIABILITY

Nothing in this Program, nor the fact that the Authority has adopted it shall be considered or construed to be an admission of any wrongdoing by the Authority or by the undersigned Labor Organizations nor shall the Program be admissible in evidence in any forum or proceeding, except with the written consent of the Authority, or as specified in paragraph S, other than a proceeding brought by the Attorney General to enforce the terms of the Program.

R. EFFECT OF PROGRAM ON EMPLOYEE RIGHTS

This Program is not intended nor shall it be construed to provide the Authority's employees, or any other third persons, with any rights concerning this Program, including, but not limited to, the right to seek enforcement of, or the modification of, any terms of this Program nor shall the Program create any third-party beneficiary rights to file any contractual claims for discrimination based on this Program. In the event that one or more of the undersigned labor organizations contend that the Authority is not in compliance with the Program, the sole and exclusive recourse of the labor organization shall be to so inform the Office of the Attorney

General, which alone shall have any right to seek enforcement of the Authority's obligations hereunder.

S. PRESERVATION OF MANAGEMENT RIGHTS

Nothing in this Program shall be construed to infringe, impair, or lessen the Authority's inherent management rights at common law or as specified under Massachusetts General Laws Chapter 161A § 19, as amended from time to time, including, but not limited to, the Authority's right to "direct, appoint, and employ officers, agents and employees and to determine standards therefor."

The undersigned Labor Organizations, their successors and assigns, expressly disclaim now and in the future any assertion: (a) that any collective bargaining rights have been created hereby; or (b) that the Authority by its negotiation or adoption of this Program has bargained collectively with the undersigned Labor Organizations; or (c) that any claim will or may be made, at any time or in any forum, that the adoption of this Program by the Authority or the terms of this Program affect, alter or amend, in any manner, the Authority's rights under G.L. c. 161A § 19, as amended from time to time; or (d) that such adoption by the Authority of this Program is or may be construed to be evidence of the undersigned Labor Organizations' or the Authority's rights to bargain under G.L. 161A § 19 as amended from time to time; or (e) that any obligations created hereunder are enforceable or admissible by or at the instance of the undersigned Labor Organizations in arbitration or any other forum.

None of the undersigned Labor Organizations shall refer to or seek to introduce this Program into evidence in any forum without the express written consent of the Authority's General Counsel or its Director of Labor Relations, except that the provisions of Sections F,

(CORRECTIVE ACTION AND DISCIPLINE), O, B(2)(3), C(1)(2) and J(3) may be excised and submitted to an arbitrator by the Authority or an undersigned Labor Organization, without objection by the other, in any arbitration or Civil Service proceeding involving discipline arising within the scope of this Program, provided however that these provisions shall not be admissible in any other arbitration proceeding, including interest arbitration.

IN WITNESS THEREOF, the undersigned have caused this Program to be adopted with their agreement as of the date set forth below.

Massachusetts Bay Transportation Authority

Commonwealth of Massachusetts
Scott Harshbarger
Attorney General

By: _____

Patrick J. Moynihan
General Manager

By: _____

Richard W. Cole
Assistant Attorney General
Chief, Civil Rights Division

By: _____

William A. Mitchell, Jr., Esq.
General Counsel

By: _____

Catherine C. Ziehl
Susan Kang
Assistant Attorneys General

Labor Organizations at the Authority

Boston Carmen's Union, Local 589
Amalgamated Transit Union, AFL-CIO, CLC

By: _____
James E. Lydon.
President and Business Agent

Office and Professional Employees'
International Union, Local 453

By: _____
Thomas Lawnsby
President

Office and Professional Employees'
International Union, Local 6

By: _____
Mary Mahoney
President

Alliance of MBTA Unions, AFL-CIO

By: _____
John Meehan
President

MBTA Police Association

By: _____
Kevin Betts
President

MBTA Sergeants Association

By: _____
Edward O'Malley
President

Building Trades Council on behalf of
Asbestos Workers Local 6
Bricklayers Local 3
Carpenters Local 51
Plasterers and Cement Masons Local 534
Electrical Workers Local 103
Operating Engineers Local 4
Iron Workers Local 7
Laborers Local 22
Laborers Local 223
Painters District Council No. 35
Pipefitters Local 537
Roofers Local 33
Sheet Metal Workers Local 17

By: _____
Joseph W. Nigro, Jr.
Secretary-Treasurer/Business Agent

International Brotherhood of
Electrical Workers, Local 104

By: _____
Robert Ward
Business Manager

National Conference of
Firemen and Oilers, S.E.I.U., Local 3

By: _____
Thomas Brassil
Business Manager

Office and Professional Employees'
International Union,
MBTA Inspectors' Association, Local 600

By: _____
Robert Breen
Business Manager

International Brotherhood of Electrical
Workers-Towermen, Local 103

By: _____
Paul Ward
Business Manager

Association of Engineers, Architects and
Draftsmen of Boston and Vicinity, Local 105

By: _____
Joseph M. DeNapoli
Executive President

International Brotherhood of Boilermakers,
Iron Ship Builders, Blacksmiths, Forgers and
Helpers, Lodge No. 651

By: _____
Leo P. Madden
Secretary-Treasurer and Business Manager

Date: February 6, 1997

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